IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.8823 OF 2004

1. Sou Lata Vilas Kamble and ors .. Petitioners

Vs

Jagdeep Namdeo Kamble, .. Respondent

Mr D.S.Sawant i/b Mr Rajesh B Parab, for the petitioners.

CORAM : D.B.BHOSALE,J.

DATE : 6th December, 2004.

PC:

1. Heard the learned counsel for the petitioners.

2. The petitioners have challenged the order dated 9.7.2004 passed by the trial Court allowing the application-Exhibit-26 filed by the respondent-plaintiff under Order 2, Rule 2 of the Code of Civil Procedure, seeking leave of the Court to sue for partition. Mr.Sawant, learned counsel for the petitioners, submitted that looking to the cause of action mentioned in the Plaint even without seeking such leave, the plaintiff can file a suit for partition and, therefore, the trial Court ought not to have allowed the said application.

3. After having heard Mr Sawant, learned counsel for

the petitioners and perused the impugned order and the other material placed before me, I am satisfied that the trial Court has rightly exercised its discretion and granted leave under Order 2, Rule 2 of CPC for the reasons recorded in the order. I find no reason to interfere with the order passed under Order 2, Rule 2(3) of CPC which, to my mind, is just and proper. The writ petition is dismissed.

(D.B.BHOSALE, J.)